

Office of the Secretary of Transportation

§ 28.150

(d) The Department shall administer programs and activities in the most integrated setting appropriate to the needs of qualified individuals with handicaps.

§ 28.131 **Illegal use of drugs.**

(a) *General.* (1) Except as provided in paragraph (b) of this section, this part does not prohibit discrimination against an individual based on that individual's current illegal use of drugs.

(2) The agency shall not discriminate on the basis of illegal use of drugs against an individual who is not engaging in current illegal use of drugs and who—

(i) Has successfully completed a supervised drug rehabilitation program or has otherwise been rehabilitated successfully;

(ii) Is participating in a supervised rehabilitation program; or

(iii) Is erroneously regarded as engaging in such use.

(b) *Health and rehabilitation services.* The agency shall not deny health services or services provided under titles I, II, and III of the Rehabilitation Act to an individual on the basis of that individual's current illegal use of drugs, if the individual is otherwise entitled to such services.

(c) *Drug testing.* (1) This part does not prohibit the agency from adopting or administering reasonable policies or procedures, including but not limited to drug testing, designed to ensure that an individual who formerly engaged in the illegal use of drugs is not engaging in current illegal use of drugs.

(2) Nothing in paragraph (c) of this section shall be construed to encourage, prohibit, restrict, or authorize the conduct of testing for the illegal use of drugs.

§§ 28.132–28.139 [Reserved]

§ 28.140 **Employment.**

(a) No qualified individual with handicaps shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity conducted by the Department.

(b) The definitions, requirements, and procedures of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), as established by the Equal Employ-

ment Opportunity Commission in 29 CFR part 1613, shall apply to employment in federally conducted programs or activities. The provisions of this section do not apply to military personnel of the U.S. Coast Guard.

§§ 28.141–28.148 [Reserved]

§ 28.149 **Program accessibility: Discrimination prohibited.**

Except as otherwise provided in § 28.150, no qualified individual with handicaps shall, because the Department's facilities are inaccessible to or unusable by individuals with handicaps, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the Department.

§ 28.150 **Program accessibility: Existing facilities.**

(a) *General.* The Department shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by individuals with handicaps. This paragraph does not—

(1) Necessarily require the Department to make each of its existing facilities accessible to and usable by individuals with handicaps;

(2) [Reserved]

(3) Require the Department to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where personnel of a DOT element believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the DOT element has the burden of proving that compliance with § 28.150(a) would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the Secretary or his or her designee, after considering all resources available for use in the funding and operation of the program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such